

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING #99-13**

IMPORTANT NOTICE: THIS RULING HAS BEEN SUPERSEDED BY PUBLIC CHAPTER 406 OF THE PUBLIC ACTS OF 1999. T.C.A. SECTION 67-4-2004(15) NOW DEFINES "NOT-FOR-PROFIT" AS "ANY PERSON INCLUDED UNDER SECTIONS 401(a), 501(c), AND 501(d) OF THE INTERNAL REVENUE CODE".

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Whether a foreign corporation having a Tennessee certificate of authority and doing business in Tennessee is subject to Tennessee corporate franchise, excise taxes.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

[THE TAXPAYER] is a [STATE OTHER THAN TENNESSEE] Corporation doing business in Tennessee. The taxpayer's only business consists of holding real estate investments in Tennessee for the [OUT-OF-STATE ENTITY], which is an exempt organization for federal income taxes purposes. The taxpayer acquires real property, holds title to and collects income from such property, and remits the entire amount of income (less expenses) to the [OUT-OF-STATE ENTITY].

The taxpayer was originally incorporated in [STATE OTHER THAN TENNESSEE] on [DATE IN 1996] and applied with the Internal Revenue Service for tax exempt status. The taxpayer was authorized to do business in Tennessee as a "for-profit" entity on [DATE IN 1996]. On [DATE IN 1997] the Internal Revenue Service issued a determination that the taxpayer is tax exempt under Section 501(c)(25) of the Internal Revenue Code.

The taxpayer states that its original Application for Certificate of Authority filed with the Tennessee Secretary of State erroneously stated that the corporation was for-profit when in fact it should have stated that the corporation was "not-for-profit." Accordingly, the taxpayer filed Articles of Correction with the Tennessee Secretary of State on [DATE IN 1998], thereby correcting its Certificate of Authority to indicate it is a not-for-profit corporation.

QUESTIONS

1. Based on the facts provided, is the taxpayer currently exempt from Tennessee corporate franchise, excise taxes?
2. If so, does the exemption apply retroactively to the inception of the original Certificate of Authority?

RULINGS

1. Yes.
2. Yes.

ANALYSIS

1. T.C.A. §§ 67-4-806 and 67-4-903 impose franchise, excise taxes on "[a]ll corporations. . . *organized for profit* under the laws of this state or any other state or country and doing business in Tennessee." (emphasis added) Thus if a corporation is not "organized for profit", Tennessee franchise, excise taxes are not applicable because the statute in effect establishes an exemption for such a corporation.

A foreign corporation legally comes into existence when it obtains a charter from the Secretary of State of the state of incorporation and legally comes into existence in Tennessee when it obtains a Certificate of Authority from the Tennessee Secretary of State. The character of the charter of a corporation is the sole determining factor as to whether a corporation is exempt from franchise, excise taxes as a not-for-profit corporation according to an Opinion of the Tennessee Attorney General's Office dated February 8, 1973. While franchise, excise tax statutes have been changed to some extent since the 1973 Attorney General's Opinion was issued, the not-for-profit exemption then in existence is basically the same today. Thus the Attorney General's Opinion is still applicable.

Under the facts provided, the taxpayer was originally authorized on [DATE IN 1996] to do business in Tennessee as a for-profit corporation. The taxpayer states, however, that its original Application for Certificate of Authority filed with the Tennessee Secretary of State erroneously stated that the corporation was

for-profit when in fact it should have stated that the corporation was not-for-profit. Accordingly, the taxpayer filed Articles of Correction and changed its Certificate of Authority to not-for-profit on [DATE IN 1998].

The Tennessee Department of Revenue has for many years considered the character of the charter or certificate of authority of a corporation to be the controlling factor in determining whether a corporation is organized for profit for purposes of the franchise, excise taxes and has been supported by the Attorney General's Office in this practice. Administrative interpretations, especially where unchallenged over a long period of time, are accorded persuasive weight by the courts of this state and will usually be followed unless palpably erroneous. *Gallagher v. Butler*, 378 S.W.2d 161, 166 (Tenn. 1964).

Because the taxpayer's Certificate of Authority is now not-for-profit, the taxpayer is exempt from Tennessee corporate franchise, excise taxes.

2. T.C.A. §§ 48-11-305 and 48-51-305 govern the correction of a document that is filed by the Secretary of State and contains an incorrect statement. T.C.A. § 48-11-305 applies to for-profit corporations and T.C.A. § 48-51-305 applies to not-for-profit corporations. Each provides that "[a]rticles of correction are effective on the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed." T.C.A. §§ 48-11-305 and 48-51-305.

As discussed above, the character of the charter or certificate of authority of a corporation is the sole determining factor as to whether a corporation is exempt from franchise, excise taxes as a not-for-profit corporation. Accordingly, the exemption will begin to apply to the taxpayer on the effective date of its not-for-profit Certificate of Authority.

It appears from the facts and documents provided that the taxpayer has corrected its original Certificate of Authority effective [DATE IN 1996], the date of the original certificate. The Department of Revenue is not a person "relying on the uncorrected document and adversely affected by the correction." Accordingly, the exemption from franchise, excise taxes will likewise apply retroactively to that date.

David A. Gerregano, Tax Counsel

APPROVED: Ruth E. Johnson, Commissioner

DATE: 4/27/99